IN THE SUPREME COURT OF MISSOURI
EN BANC

SC90902

ROYAL FINANCIAL GROUP, LLC
RESPONDENT
VS.
MARGARET A. GEORGE
APPELLANT

Appeal from the Circuit Court
Twenty-First Judicial Circuit
St. Louis County, Missouri
The Honorable Sandra Ferragut-Hemphill
Case No. 08SL-AC29780
Appeal No. ED-92972

APPELLANT'S SUBSTITUTE REPLY BRIEF

ORAL ARGUMENT REQUESTED

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INTRODUCTION

This Brief is titled Appellant's Substitute Reply Brief although there was no reply brief filed with the Eastern District. The purpose of this Brief is, in part, to address an argument based upon a case cited by Respondent, *White v. Dir. of Revenue,* ____ S.W.3d _____, 2010 WL 3269232 (Mo banc Aug. 3, 2010) which was decided since Appellant's Substitute Brief was filed. And there is additional discussion of an FDCPA case, *Kimber v. Federal Fin. Corp.*, 668 F.Supp 1480 (M.D. Ala. 1987). Primarily, however, Appellant responds to certain misstatements in Royal Financial's Substitute Brief, especially those identified as "facts," which are inaccurate and misleading in that they suggest that Margaret George alleged and needed to prove “bad faith” on the part of Royal Financial.

ARGUMENT

> Respondent's Statement of facts should be stricken, in whole or in part, because it does not comply with Rule 84.04(c) Mo.R.Civ.P. in that it is to a significant degree a misrepresentation of he facts, not a fair statement of the facts; and also because it does not comply with Rule 84.04(i) in that there often are no specific page references to the record on appeal.

The Respondent’s Statement of Facts generally is not in compliance with Rule 84.04 Mo.R.Civ.P. because it frequently contains arguments and other statements which are not “facts” and which are not supported by citations to the record.

An early example is on page 1 of the Brief where Respondent states, as a matter of fact, that Margaret George presented no evidence that Royal Financial acted in "bad faith" and now asks that Court, on appeal, to "infer" bad faith and a lack of reasonable, factual basis for filing its lawsuit. This is the first of several attempts to mislead the Court regarding the fundamental contention of Appellant Margaret George. Respondent is here planting the seed which it hopes to grow into a "straw man" for it to attack by repeatedly misrepresenting Margaret George's position before the trial court and this Court. The success of Margaret George's counterclaim does not depend on proof that Royal Financial acted in "bad faith" on the day it filed the lawsuit against Margaret George.

The next paragraph on page 1 should be stricken. In the second sentence the Respondent begins by describing, as a matter of fact, that its debt collection petition was filed "In accordance with the informal pleading requirements of Chapter 517, R.S.Mo." This is a legal conclusion, not a fact. Of greater importance, however, is the next sentence.

In its "Statement of Facts" Respondent Royal Financial claims that "It alleged that Margaret George had signed a credit card agreement, attached a copy of portions of the agreement, and that she owed $2,209.24 in principal and $727.77 in interest." (Emphasis added.) This simply is not correct. Royal Financial did not allege anywhere that Margaret George "signed" any agreement. See LF 5. At the very worst, this is an effort to mislead the Court into believing that Royal Financial was suing on a signed agreement to pay money; that Royal Financial had some knowledge of such a signed agreement linking Margaret George to the alleged credit card. Perhaps Respondent was not deliberately trying to mislead the Court; even so, this is more significant than a simple clerical error. At the very

least, this obviously false statement shows that the attorney who reviewed the legal file mistakenly assumed that Royal Financial must have been in possession of some sort of signed agreement; otherwise the whole lawsuit likely would not be justified. This forensic version of a Freudian slip is very telling; it is diagnostic of a violation of 1692e which prohibits false or misleading representations. If an accomplished, experienced appellate attorney was misled by the petition filed by Royal Financial, "the least sophisticated consumer" certainly might have thought that Royal Financial actually possessed something which proved that she owed the debt. But in any event, the statement that Royal Financial alleged that it possessed a signed agreement in its petition is false, not supported by the record and should be stricken.

At the top of page 2 of its Substitute Brief Respondent ends a paragraph with a description of the counterclaim as one consisting of "allegations of bad faith". The term "bad faith" is not included in the alternative allegations of the counterclaim (LF 11-13) and Margaret George was not required to allege or prove any sort of "bad faith" in order to prevail on that counterclaim. This certainly is not a "fact" in this lawsuit. This is another example of misdirection; Respondent is building its "straw man" which it hopes to attack because it cannot prevail if the Court is focused on the legitimate issues in this lawsuit.

In the second complete paragraph on page 2 of its Substitute Brief Respondent states "Large-volume debt collection firms 'often' dismiss small claims when met with resistence, *Miller v. Javitz, Block & Rathbone*, 561 F.3d 588, 591 (6th Circuit 2009), because the expense of prosecution exceeds the amount of recovery." This is a flagrant violation of Rule 84.04(c) and (i) and should be stricken. There is no citation to any part of the record on

appeal for this alleged “fact” because there is nothing in the record on appeal to support the claim that Royal Financial, which indeed may be a large-volume debt collection firm, dismissed its lawsuit against Margaret George because the expense of prosecution exceeded the amount of recovery. This again properly could be regarded as an effort on the part of Respondent to create a false impression that it had all the proof necessary to prevail, but simply could not be bothered. There is no evidence that this is the case. All of the evidence is to the contrary.

On page 3 of its Brief Respondent quotes a few lines of testimony as to whether or not Margaret George had made a payment on a credit card and then claims that these responses are "equivocal" and presumably not worthy of belief. Respondent, however, omits additional testimony, set out below, which shows that Margaret George was not at all ambiguous or equivocal in her testimony that no payments were made on any credit card during the preceding years.

Q Have you ever had a credit card?

A. Yes.

Q. When --

A. Nine years ago.

Q. I'm sorry. I didn't hear you.

A. Nine years ago.

Q. Okay. Have you used any credit card at all in the last nine years?

A. No.

Q. When you had a credit card nine years ago, how many credit cards did you have?

A. One.

Q. Did you ever have more than one credit card?

A. No, not that I know of.

Q. Do you remember the company that gave you the credit card?

A. No.

Q. Do you know if you made any payments on a credit card during the last nine years or so?

A. No.

Q. You did not make any payments?

A. No.

Page 13, direct examination

Q. Ma'am, you indicated to your lawyer that you don't remember making any payments on a credit card in the last ten years?

A. No, I don't.

Q. Is it that you don't remember making any payments or that -- is your statement that you did not make any payments?

A. I did not make any payments.

Q. And you say you only had one credit card?

A. Yes.

Page 18, cross-examination.

Appellant Margaret George concedes that a litigant might be allowed to quote only a portion of the testimony of a witness and still be in compliance with the Rules. But after the very short quotation on page 3 of its Brief, Respondent makes the statement that "she

presented no direct evidence in support of her claim that Royal acted in bad faith or lacked a reasonable basis for the lawsuit." Once again, this is not a statement of fact, it is an argument. Margaret George did not claim "bad faith." The obvious reason it is included in the "statement of facts" portion of the brief is to create the false impression, the "straw man," that Margaret George pleaded and needed to prove that Royal Financial acted in bad faith on the day it first filed the lawsuit in order to prevail on her counterclaim.

On page 4 of its brief, at the conclusion of its Statement of Facts, Respondent Royal Financial sets out a quotation from the oral argument before the Eastern District which is inaccurate. Appellant Margaret George does not possess an authenticated transcript of that oral argument but she has a copy of the Compact Disk recording of that argument which is part of the Record before this Court. The argument on the audio CD is 26 minutes and 31 seconds (26:31) long. At approximately 16 minutes and 15 seconds into the argument (16:50) Respondent's attorney was challenged by a question from the bench essentially asking Royal Financial to agree that when it filed the lawsuit against Margaret George it had nothing in its possession to prove its lawsuit was within the statute of limitations. At 17:00 Royal Financial's attorney responded "[O]ur client had electronic information in its possession at the time <u>that the case was filed</u> that indicated that it was within the statute of limitations. We didn't have a copy of a hard copy of a statement that had been produced for us. . . ." (Emphasis added.) The Eastern District Judge then demanded, at 17:07 "Why didn't you get ahold of that, you had all this time . . . ." This was answered at 17:27 with a "cottage industry" argument.

Respondent omitted the words "that the case was filed . . ." which fixed the time when it supposedly had some electronic information. Omitting these few words is not a trivial mistake. What Royal Financial admitted during oral argument was that it dismissed the lawsuit at the eleventh hour because it did not have any evidence, any proof, that Margaret

George owed the sums set out in its petition. The above statement to the Eastern District amounted to a defensive claim that at the time Royal Financial decided to file the lawsuit it possessed some sort of "electronic information" but that electronic information, whatever it supposedly was, was never produced in response to discovery, nor in response to the Court orders, and apparently did not exist by the time of trial. By omitting a few words from the quotation of its statement at oral argument, Royal Financial is creating the false impression that it has, or did have, some evidence to offer in opposition to the counterclaim of Margaret George. This is not correct. The quotation in the Statement of Facts is not complete and is therefore inaccurate and should be stricken.

The FDCPA is a strict liability statute; Margaret George was not required to plead or prove that Royal Financial acted in "bad faith" or with any particular mens rea or specific intent when it filed its lawsuit in order to prevail on her counterclaim.

Royal Financial intentionally drafted a petition, intentionally filed it in associate court and intentionally served it on Margaret George. This is the type of "intentional" act which cements liability of a debt collector who files suit against someone who is not legally required or obliged to pay the debt. *Jerman v. Carlisle, McNellie, Rini, Kramer & Ulrich, LPA*, 559 U.S. ____, 130 S. Ct. 1605, 1611-1612 (2010). Royal Financial incorrectly suggests a 1987 opinion established a special rule which applies in this case so that the FDCPA is not a "strict liability" statute for Margaret George.

The landmark opinion in *Kimber v. Federal Finance Corp*., 668 F.Supp. 1480 (M.D. Ala. 1987) did not establish a special standard for debt collectors who file suit on claims barred by the applicable statute of limitations or dig a "safe harbor" to protect them from FDCPA claims. In that case the plaintiff Cindy Ann Kimber filed a class-action lawsuit

against debt collector FCC alleging that it violated the FDCPA "by threatening to sue, and suing, Kimber and others to collect on . . . debts even though, as far as FFC knew, it was not entitled to recover in the suits because the debts were stale. *Supra* 668 F.Supp at 1481. Each party had filed motions for summary judgment, and the court had before it records of FFC which established that Ms. Kimber's account had been in default for many years; the last activity had been a May, 1975 payment, nearly nine years before the lawsuit was filed. *Supra* at 1482. Thus, under the facts of that case, there was no issue about the consumer's need to show what the debt collector knew or did not know about the statute of limitations. Any language in the opinion to the contrary is not part of the court's holding, it is dicta.

One of the several defenses raised by FFC was that it was not responsible for the conduct of its attorney (at that time, more than 20 years ago, the FDCPA did not apply to attorneys). *Supra* at 1486. The court found that the debt collector client was bound by the acts or omissions of its attorney. The two remaining issues were: did FFC violate Section 1692e of the FDCPA by calling Ms. Kimber and threatening to file suit; and, did FFC violate the Section 1692f by actually filing suit. After careful discussion, the court answered each question affirmatively and entered summary judgment in favor of Ms. Kimber.

With respect to whether or not filing the lawsuit violated Section 1692f, which prohibits the use of unfair means to collect a debt, the court described the issue as "Kimber argues that filing a lawsuit to collect a debt that appears to be time-barred without first determining after a reasonable inquiry that the limitations period is due to be tolled constitutes an unfair and unconscionable practice offensive to §1692f. The court agrees with Kimber." *Supra* at 1487. Its analysis makes it clear that by making that statement the *Kimber* court was not stating that Ms. Kimber needed to prove that FFC acted in "bad faith."

The *Kimber* court began its analysis by describing the purpose served by statutes of limitations: "They reflect a strong public policy, as determined by legislative bodies and

courts that 'it is unjust to fail to put the adversary on notice to defend within a specified period of time. ... .' " *Id*. Like Margaret George, Cindy Kimber could not state the exact date she made the last payment, except that it hd been many years, and she had no documents. *Supra* at 1482. This was the result of the age of the debt, the passage of time, and was not a defect in her proof. The court went on to explain that such lack of detail is not only understandable, it is a predictable consequence of filing suit on such an old debt. That is, the inability to present a detailed case based upon precise recollection supported by receipts, cancelled checks and other documents is part of the injustice statutes of limitations are expected to prevent.

> As previously demonstrated, time-barred lawsuits are, absent tolling, unjust and unfair as a matter of public policy, and this is no less true in the consumer context. As with any defendant sued on a stale claim, the passage of time not only dulls the consumer's memory of the circumstances and validity of the debt, but heightens the probability that she will no longer have personal records detailing the status of the debt. Indeed, the unfairness of such conduct is particularly clear in the consumer context where courts have imposed a heightened standard of care-that sufficient to protect the least sophisticated consumer. Because few unsophisticated consumers would be aware that a statute of limitations could be used to defend against lawsuits based on stale debts, such consumers would unwittingly acquiesce to such lawsuits. And, even if the consumer realizes that she can use time as a defense, she will more than likely still give in rather than fight the lawsuit because she must still

> expend energy and resources and subject herself to the embarrassment of going into court to present the defense; this is particularly true in light of the costs of attorneys today.

Kimber, supra, 668 F.Supp. at 1487.

FFC, the debt collector in *Kimber*, argued that it had a right to prosecute a lawsuit even when it knew the statute of limitations had run, since the defendant debtor could choose to waive the defense. *Supra* at 1488. The resolution of this contention makes it obvious that the *Kimbe*r court was not saying a plaintiff like Ms. Kimber or Margaret George must prove what the debt collector "knew or should have known." The *Kimber* court explained that an attorney who represents a debt collector was required by professional obligations, including those set out in Rule 11, Fed. R. Civ. P.,to conduct a reasonable investigation to determine whether or not the statute of limitations had run. *Id.* The reasonable investigation was presumed. The investigation in that particular case would have been limited to whether or not there had been some event to "toll" the statute since FFC knew Ms. Kimber's account had been in default for nearly nine years. *Id.*

The above quotation from *Kimber* shows why it is unfair and unjust to file a suit on an old debt barred by the statute of limitations. Margaret George proved that this is what Royal Financial did. If she was required to prove that Royal Financial acted in “bad faith” she did that as well by showing that the only possible connection between her and the alleged debt was a piece of paper dated “9/98.” *Kimber* teaches that there was a duty to investigate the legal validity of a suit based on such an old account. That is, it can be presumed that Royal Financial knew or should have known the suit was barred by the statute of limitations when the suit was filed. And when it had the letter from Appellant’s attorney. And later when it had interrogatories it could not answer. But she did not need to allege or prove what Royal Financial knew or should have known. *Jerman* teaches that the only “scienter” the

consumer/debtor is required to prove is the intent to do an act, file a lawsuit and continue to prosecute a lawsuit in this case, which is a violation of the FDCPA.

Since Appellant's Substitute Brief was filed, courts in other jurisdictions have issued opinions confirming the FDCPA is a strict liability, remedial statute which does not require an injured consumer to prove that the debt collector's violation was knowing or intentional. *See e.g., McNall v. Credit Bureau of Josephine County, Inc*., 2010 WL 3306899 (D. Or. Aug. 19, 2010); *Agueros v. Hudson & Keyse, LLC*, 2010 WL 341286 (Tex. App. Aug. 31, 2010). The only "good faith safe harbor" available to a debt collector is the affirmative defense of Section 1692k(c) which was never plead by Royal Financial and may not be available in any case under the ruling of the United States Supreme Court in *Jerman, supra*.

Margaret George was not required to mark a copy of the FDCPA as an exhibit and admit it into evidence.

On page 20 of the brief Royal Financial makes the odd argument that Margaret George could not prevail on her counterclaim because she did not mark the FDCPA statute as an exhibit and introduce it into evidence. *Randal v. St. Albans Farms, Inc.*, 345 S.W.2d 220, 223 (Mo. 1961) seems to say that a trial court is not required to take judicial notice of records on file with the court in a different case. It is not clear that this case supports the statement made by Respondent on page 20 of its brief. It might be analogous to this case if Margaret George had not marked a copy of the Summons and Petition served upon her as an exhibit and had it admitted into evidence; but had instead simply assumed that the Court would take notice that it existed. Otherwise, *Randall v. St. Albens* does not apply. The second case, *Automotive Leasing Corp. v. Westerhold*, 945 S.W.2d 660 (Mo. App. E.D. 1997) concerned the appeal of a pro se defendant/counterclaim plaintiff who did not appear for trial. Apparently one of the allegations of error was that the trial court failed to take judicial notice, according to the pro se appellant, that his counterclaim was not answered.

One of three reasons listed by the Eastern District for the failure of this point on appeal was that the pro se litigant never asked the trial court to take judicial notice of anything. *Supra* at 622. This does not relate in any fashion to Margaret George's counterclaim against Royal Financial or anything that happened at trial. The case certainly does not support the argument that Margaret George failed to prove a violation of the FDCPA because she did not mark a photocopy of the statute as an Exhibit and offer it into evidence. Neither case repeals Section 490.080 which states in its entirety; "Every court of this state shall take judicial notice of the statutes of every state, territory and other jurisdiction of the United States."

But in any event, Margaret George did present the Trial Court with an 11-page Trial Memorandum (Supp. LF 45-54) which was mentioned from time to time during the proceedings. (See e.g. TR 2, 3,5, 8, 28, 35, 36 and 45.) The Trial Memorandum explained in considerable detail how and why Royal Financial had violated the FDCPA so that Margaret George was entitled to a judgment on the counterclaim. Appellant cannot respond to the "sauce for the goose is sauce for the gander" argument of Respondent at the bottom of page 20 of its brief except to say Respondent is subject to the FDCPA and she is not.

Statements of Royal Financial made during oral argument are judicial admissions.

At the bottom of page 22 of its Brief Respondent Royal Financial makes the claim that the statements of its attorney, made during the oral argument before the Eastern District, cannot be considered "judicial admissions" because they do not concede any aspect of her case. Royal Financial's admission during oral argument that it dismissed its case because it did not have evidence that Margaret George owed the amounts claimed in its petition are a concession, a judicial admission, that it had been attempting to collect a debt Margaret George did not owe, and it was an admission that it could not rebut the allegations of the counterclaim. But another obvious significance of the admission is that as of Monday, April

27, 2009 (the day Royal Financial dismissed its Petition against Margaret George and Margaret George's Motion for a Protective Order was denied as moot, LF 37), Royal Financial did not have any evidence. It did not have any evidence to offer, therefore, Wednesday afternoon, April 29, 2009 when the case was tried. If it ever did possess any evidence to rebut anything Margaret George said during her testimony, it would have been obliged to produce it whether it was a piece of paper or a description of "electronic information" in response to discovery requests such as interrogatory 8 (when did Margaret George last use the credit card) or interrogatory 11 (when did Margaret George last receive any extension of credit) or interrogatory 12 (when was the date of the last payment) or interrogatory 16 (when was the account mentioned in the Petition first in default). These interrogatories are set out in LF 21-23. The significance of the judicial admission Royal Financial made during its oral argument is that it did not possess any evidence to rebut the testimony of Margaret George that she never used any credit card or made any payments on any credit card during the nine (9) years before the lawsuit was filed and Respondent Royal Financial did not possess any evidence to show that its conduct could be justified under any "bona fide error" affirmative defense, assuming it had raised such an affirmative defense.

A review of the interrogatories and production requests and the court orders mentioned above shows why the statement near the bottom of page 23 of the Brief is inaccurate and/or misleading. On the bottom of page 23 of its brief Respondent Royal Financial suggests that the information requested in the interrogatories and production requests only went to the merits of Royal Financial's claim against Margaret George, not to the counterclaim which Margaret George filed against Royal Financial. There is no distinction. The specific information requested in the three interrogatories unidentified above are directly relevant to the affirmative defense of Margaret George to the effect that the lawsuit filed against her by Royal Financial was barred by the statute of limitations. The

same evidence was, or would have been if it existed, relevant to the allegations in the counterclaim to the effect that Royal Financial violated the Fair Debt Collections Practices Act. Similarly, discovery requests such as interrogatory 5 (how did Royal Financial acquire its interest), interrogatory 6 (was Royal Financial able to produce any agreement or promise to pay money signed or expected by Margaret George), interrogatory 7 (does Royal Financial have any written application for credit made by Margaret George), interrogatory 10 (does Royal Financial have any itemized billing statement), interrogatory 14 (how was the amount of money claimed in the Petition determined or calculated) and interrogatory 15 (how was the amount of attorney's fees demanded in the Petition determined or calculated) are not only relevant to Royal Financial's claim against Margaret George, they are also directly relevant to her denial of the allegations in her answer and her affirmative defense that Royal Financial did not have and could not prove a valid assignment and therefore was not the real party in interest. Such evidence, if it existed, conceivably would have been part of any defense Royal Financial might have made during its case at trial. Royal Financial admitted that it did not possess anything. Therefore, it would be a futile fact to remand this case so that Royal Financial could be allowed to put on evidence. (All of this assumes, of course, that Royal Financial had pled an affirmative defense to the FDCPA, which it did not do under anyone's version of the facts.)

The recent case of *White v. Director of Revenue*, ____ S.W.3d ___, 2010 WL 3269232 (Mo banc, Aug. 3, 2010) does not require that the ruling of the trial court be affirmed.

The Eastern District correctly recognized that the *Murphy v. Carron* does not require that the ruling of the trial court be affirmed. The recent opinion of this Court in *White v. Director of Revenue,* does not require a different result.

White involved a challenge to the determination of the Director of Revenue that a motorist's license to drive must be suspended due to drunk driving. In order to sustain the suspension, the Director of Revenue needed to prove that the arresting officer had probable cause to arrest the motorist for an alcohol-related offense. *White, supra* at *1, 8. The only witness was the arresting officer who explained that he stopped White for speeding and not using a turn signal, not alcohol-related offenses. *White, supra* *1, 2. After the traffic stop, the officer perceived a "strong odor" of alcohol, gave a field sobriety test which revealed signs of intoxication and obtained a positive blood alcohol Breathalyzer test. *Id*. On cross examination, the driver's attorney successfully challenged the officer's recollection of critical details of his sobriety test; used the officer's written report to impeach the "strong odor" of alcohol testimony; had the officer admit that the vehicle did not smell of alcohol, the operation of the vehicle was not erratic, and that certain "swaying" described in his direct examination was minimal; and caused the officer to contradict his direct testimony regarding a one-leg stand test. *Id*. The status of the law was certain; that is, there was no question or concern that the trial court or the parties in *White* were litigating a novel theory or testing a new statute. They had stipulated to all factual issues other than the presence or absence of probable cause, which depended upon the arresting officer's testimony. *Supra* at *1. The Director of Revenue's point on appeal was that because the trial court made no finding that the officer was not credible, and his was the only testimony, the trial court's judgment in favor of the motorist and against the Director's suspension was against the weight of the evidence. *Supra* at *3.

In resolving the issue raised by the Director's appeal, this Court followed its practice in *State v. Milliorn*, 794 S.W.2d 181 (Mo banc 1990). *White*, *supra* at *9. Even though the trial court did not issue findings of fact, if the record showed that the trial court "apparently did not believe" the testimony of a witness and the trial court's ruling is "plausible in light

of the record view in its entirety," the ruling of the trial court will not be disturbed. *Id*. Having announced this rule, this Court then observed in detail how the cross examination of the police officer effectively challenged not only his recollection but also his credibility by impeaching him with his prior written statement and having him contradict his testimony on direct examination. *White, supra* at *10. For this reason it was clear that the trial court's judgment was based upon its evaluation of the credibility of the witness so that the judgment was not against the weight of the evidence. *Id.* "The record thus indicates a basis for the trial court to disbelieve the Director's evidence." *White, supra* at *11, concurring opinion of Chief Justice Price.

The evidence of Margaret George was not "contested" by cross examination or argument. Everything she said on direct examination was repeated during the brief cross examination. She admitted on direct that she could not recall certain events which occurred around the time she was sued in 2008, such as the name of the debt collector who had called her or the exact date she was served with a summons, because she was struggling with a serious illness at that time. TR 14-15. She repeated those answers in response to seven of the ten questions which constituted her entire cross examination. TR 18. Her testimony on direct examination that she never had more than one credit card and made the final payment on that account about ten years before the day of trial was repeated emphatically in response to the first three questions on cross examination. *Id*. Her exhibits, which were received without objection, were consistent with her testimony and supported her claim that Royal Financial injured her by violating the FDCPA.

The trial court below was not working in a well-settled area of the law. The Eastern District correctly noted that the question of what conduct violates sections of the FDCPA is an issue of first impression in Missouri. It is apparent that the trial court found Margaret George to be a credible witness in that the trial court believed she had received phone calls.

TR 47. To use the language of *White*, there is nothing apparent in the record that the trial court disbelieved the testimony, nothing to indicate a basis for disbelief. This Court still will reverse a judgment in a case where the record supports a firm belief that the judgment is wrong. *White, supra* at *6. This is such a case.

SUMMARY

Margaret George did not plead that Royal Financial acted in " bad faith" and was not required to prove its "bad faith" existing from the moment of its decision to sue her on a stale debt. In any event, by proving that she did not own an active credit card account for nine or ten years before the trial, she established facts to show, by inference, that Royal Financial knew or should have known it did no have a legally enforceable claim to support its suit. Certainly Royal Financial knew or should have known it was forcing Margaret George to defend a suit it could not prove and win by the time it received the letter from Margaret George's attorney, had her affirmative defenses and was faced with the discovery requests it could not or would not answer. There is no need to remand this case for more evidence regarding the FDCPA liability because Royal Financial has admitted it has no evidence, refused to produce any evidence, and, in any event, never raised an affirmative defense.

CERTIFICATION PURSUANT TO RULE 84.06(c)

COMES NOW Defendant/Appellant Margaret George and certifies that the number of words in this Brief does not exceed 31,000 (5,967 words) and that the number lines of text do not exceed 2,200 (546 lines).

NOTICE OF ELECTRONIC FILING

NOTICE that, in addition to filing her briefs as required by Rule 84.05(a), Defendant/Appellant Margaret George has prepared and filed a CD or floppy disk containing

a copy of this Brief in Word and WordPerfect formats; and further, certifies that the electronic copy has been scanned for viruses and is virus free.

Respectfully submitted,

_____

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EN BANC

ROYAL FINANCIAL GROUP, LLC,	)	
Respondent,	)	
v.	)	SC90902
MARGARET A. GEORGE,	)	
Appellant.	)	

CERTIFICATE OF SERVICE

COMES NOW Appellant and certifies that copies of Appellant's Substitute Reply Brief were sent via 1st Class, U. S. Mail, postage pre-paid and by electronic mail on or before this 22nd day of September, 2010 to the following:

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